

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 368 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

GAJANANDBHAI MORE

Appearance:

MR RC KODEKAR, APP for Appellant
Respondent No. 1 served

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 14/10/1999

ORAL JUDGEMENT

1. Appellant - State of Gujarat has filed this
Appeal under Section 378 of the Code of Criminal
Procedure, 1973, against the order of acquittal dated
January 28, 1991, passed by the learned Judicial
Magistrate, First Class, Panchmahals at Godhra, in

Criminal Case No. 1074 of 1988.

2. Brief facts of the prosecution case as unfolded at the trial be summarised as under :

3. The respondent was serving as SRP Constable, Group No.IV at Godhra. On February 25, 1988 at about 2130 hours, Police Inspector, SRP Group No.V, Mr. Omprakash Sughanchand Kachhava, took check roll of the SRP personnel as per the orders of the Commandant of the Company. At the time of check roll, it was found that the respondent was smelling of alcohol. The respondent and other two SRP personnel were tested by Alcohol Analyzing Machine and it was found that all the three SRP personnel had consumed alcohol. By the orders of the Commandant, Police Inspector Mr. Kachhava had taken all the three SRP personnel to Godhra Police Station. The panchnama of the presence of the respondent was prepared at the Police Station and he was sent for medical examination to Civil Hospital, Godhra. The blood of the respondent was taken at the Godhra Police Station by Medical Officer Dr. Ramjibhai Shivabhai Bhagor on 26.2.1988 around 2.30 a.m. The report of the blood test revealed that the respondent had consumed alcohol. On completion of the investigation, charge sheet came to be filed against the respondent in the Court of Judicial Magistrate, First Class, Panchmahals at Godhra, for the offences punishable under Sections 66(1)(b) and 85(1)(3) of the Bombay Prohibition Act, which came to be numbered as Criminal Case No. 1074 of 1988. Plea of the respondent was taken by the learned Judicial Magistrate, First Class, Godhra, wherein he pleaded not guilty to the charge and claimed to be tried. To prove the case against the respondent, the prosecution examined the following witnesses :

- (i) PW1 - Iqbalbhai Husainbhai - Exh.5
- (ii) PW2 - Natvarlal Ramanlal - Exh.8
- (iii) PW3 - Omprakash Sughanchand Kachhava - Exh.12
- (iv) PW4 - Hariharbhai Manibhai, PSI, - Exh. 15
- (v) PW5 - Dr.Ramjibhai Shivabhai Bhagor - Exh.18
- (vi) PW6 - Mohbatsing Kanubhai Jhala, PSI - Exh.24
- (vii) PW7 - Govindbhai Hirabhai Patel - Exh.26

4. The prosecution to prove the charge levelled against the respondent produced documentary evidence, such as, complaint drawn by P.I. Kachhava at Exhibit 13, panchnama - Exhibit 6, Certificate of the Medical Officer

of the Civil Hospital, Godhra - Exhibit 21, Reports of the Senior Scientific Assistant and Forensic Laboratory at Exhibit - 22. On completion of the evidence of the prosecution, the respondent was questioned generally, and his statement came to be recorded under Section 313 of the Code of Criminal Procedure, 1973 by the learned Magistrate. In his further statement, the respondent stated that he was innocent and a false case has been filed against him. However, the respondent did not examine any witness in his defence.

5. On over all appreciation of the oral as well as the documentary evidence, the learned Magistrate after hearing the arguments of the learned advocates of the prosecution and the respondent, concluded that the Medical Officer had not complied with Rule 4 of the Bombay Prohibit (Medical Examination and Blood Test)

Rules, 1959 (hereinafter referred to as the "Rule" for short), which is a mandatory provision. The learned Magistrate further held that as there was breach of the mandatory provision of Rule - 4, the prosecution lodged against the respondent must fail. The learned Magistrate, therefore, by his judgment and order dated January 28, 1991, acquitted the respondent of the charges framed again him under Section 66(1)(b) and 85(1)(3) of the Bombay Prohibition Act, 1949, which has given rise to the filing of the present Appeal by the Appellant State of Gujarat.

6. Learned Additional Public Prosecutor Mr. R.C. Kodekar has taken me through the entire evidence produced on the record of this case and has submitted that Dr.Bhagor - Exhibit 18 had deposed in detail the manner in which he took the blood sample from the vein of the respondent. It is further submitted by the learned Addl. Public Prosecutor that Dr.Bhagor had followed the mandatory provision of Rule 4 and, therefore, the learned Magistrate erred in observing that the Rule-4 was not complied with. It is also submitted by the learned Addl. Public Prosecutor that the Certificate issued by Civil Hospital, Godhra, Exhibit 21 and the Report of the Forensic Laboratory - Exhibit 22, clearly indicate that the respondent had consumed alcohol, which was beyond the prescribed limit. Learned Addl. Public Prosecutor, therefore, submitted that the prosecution had proved its case beyond the reasonable doubt and, therefore, the Appeal be allowed and the order of acquittal be set aside.

7. Before appreciating the arguments advanced by the learned Addl. Public Prosecutor, it is relevant to note the provisions of the Rule- 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959, which reads as under :

4. Manner of collection and forwarding of blood:

(1) The registered medical practitioner shall

use a syringe for the collection of the blood of the person produced before him under rule 3. The syringe shall be sterilized by putting in the boiling water before it is used for the aforesaid purpose. He shall clean with 1% aqueous solution of mercurochrome or gentior violet, not containing alcohol or its solution the skin surface of that part of such person's body from which he intends to withdraw the blood. No alcohol shall be touched at any stage while withdrawing blood from the body of the person. He shall withdraw not less than 5 c.c. of venous blood in the syringe from the body of the person. The blood collected in the syringe shall then be transferred into a phial containing anticoagulant and preservative and the phial shall then be shaken vigorously to dissolve the anticoagulant and preservative in the blood. The phial shall be labelled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner.

(2) The sample blood collected in the phial

in the manner stated in sub-rule (1) shall be forwarded for test to the Testing Officer either by post or with a special messenger so as to reach him within seven days from the date of its collection. It shall be accompanied by a forwarding letter in Form "B" which shall bear a facsimile of the seal or monogram used for sealing the phial of the sample of blood.

8. Dr. Bhagor - Exhibit 18 had deposed that he had followed the requirements of Rule-4 and had taken the sample of blood personally. However, the deposition of PSI - H.M. Patel - Exhibit 15, reveals that Dr. Bhagor

had not personally taken the sample of blood of the

respondent. On the contrary, he deposed that he was sitting with Doctor of Civil Hospital, Godhra and Dr. Bhagor had not taken the sample in his presence and some other employees of the Civil Hospital had drawn the blood sample of the respondent and brought it where he was sitting with Dr. Bhagor in the Civil Hospital, Godhra. He admitted that the blood sample of the respondent was not drawn by Dr. Bhagor. The evidence of PSI H.M.Patel, destroys the evidence of Dr. Bhagor that he had drawn sample of blood of the respondent in the early morning hours on 26.2.1988 at Civil Hospital, Godhra. If the sample of blood was drawn by some other employees of the Civil Hospital, then, there was a clear breach of Rule-4 of the Rules. Rule-4 says that the blood sample should be collected by a Registered Medical Practitioner only. The evidence of PSI - H.M. Patel clearly indicates that Dr. Bhagor was on duty at the Civil Hospital, Godhra, had not come or collected the sample of blood from the body of the respondent and therefore, there was a clear breach of Rule-4 of the Rules, which is held to be a mandatory by Full Bench of this High Court in the case of CHAMANBHAI GANGARAM vs. STATE OF GUJARAT, reported in 1984 GLH 438. Following propositions appearing in the Head Note-A might be noted :-

" The discussion and analysis of the relevant statutory provisions yield the following resultant categories of cases :

- (i) If the authorised registered medical practitioner who collects the blood sample is in charge of the concerned hospital or dispensary, he can utilise the official seal of the hospital or dispensary for getting it affixed on the phial of collected blood sample. That would be considered to be his official seal;
- (ii) If the authorised registered medical practitioner who collected the blood sample in the phial as per Rule 4(1), is not in charge of the hospital or dispensary, his official seal for the purpose of its affixation on the phial as per Rule 4(1) would be his personal seal, if any, and if there is no such seal, he can utilise his monogram for the purpose;
- (iii) Any authorised registered medical practitioner who is either a doctor in charge or any other medical practitioner attached to or serving in the hospital or dispensary can in his or her discretion utilise his or her monogram for

the purpose of affixing it on the sealed phial even if there is available for the purpose an official seal of the hospital or his own personal seal, as the case may."

9. In the present case, Dr. Bhagor had also deposed that he had applied seal on the bottle, in which the blood sample was collected. Dr. Bhagor did not depose that which seal he had applied on the Bottle. Rule-4 prescribes that the phial shall be labelled and its caps sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner. The oral testimony of Dr. Bhagor does not reveal that which seal was applied by him or he had applied his own monogram on the phial, in which the blood was collected and sent to the laboratory for analysis. Thus, this lapse on the part of Dr. Bhagor also indicates that Rule-4 which is a mandatory provision was not strictly followed and there was a breach of the sub-rule. Therefore, the contentions raised by the learned Addl. Public Prosecutor that Dr. Bhagor had followed the procedure as prescribed under Rule-4 of the Rules is having no merit and deserves to be rejected as the

mandatory provision of Rule-4 of the Rules are not followed. Therefore, I am of the opinion that the order of the acquittal cannot call for any interference in this Appeal filed by the Appellant State of Gujarat.

10. For the foregoing reasons, I do not find any merit in the Appeal and the same deserves to be dismissed and is hereby dismissed.

p.n.nair